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CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 698

HAROLD ANDERSON,

Appellant,

vs.

THE PEOPLE OF THE STATE OF MICHIGAN

APPEAL FROM THE CIRCUIT COURT OF BERRIEN COUNTY, STATE OF MICHIGAN

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

STEPHEN J. ROTH,
Attorney General of Michigan;
EDMUND E. SHEPHERD,
Solicitor General of Michigan;
DANIEL J. O'HARA,
Assistant Attorney General of Michigan;
JOSEPH E. KILLIAN,
Prosecuting Attorney of Berrien County, Michigan,
Counsel for Appellee.

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IN THE CIRCUIT COURT FOR THE COUNTY OF BERRIEN, STATE OF MICHIGAN

No. 6352

THE PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v.

HAROLD ANDERSON,
Respondent-Appellant

APPELLEE'S STATEMENT AS TO JURISDICTION AND MOTION TO DISMISS OR AFFIRM

The appellee, believing that the matters set forth below will demonstrate the lack of substance in the questions raised by this appeal, insofar as a federal question is concerned, files this, its statement in opposition to appellant's statement as to jurisdiction. Appellee includes herein its motion to dismiss the appeal or in the alternative to affirm the judgment of the lower court on the ground that the questions raised on behalf of appellant are so unsubstantial insofar as a federal question is concerned as not to need further argument.

Appellee asserts that the unsubstantial character of the grounds stated by appellant is so apparent on the face of the record as to warrant the court in summarily disposing of the appeal at this stage of the proceeding.

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The matters here relied upon by appellee and more particularly stated below are:

The trial court stated (Page 4 of the Findings of the Court):

> "From a consideration of all the factors in this case the court is of the opinion that the testimony of the complaining witness Gruss, which in its essentials was that he well knew the respondent Anderson and that on the occasion in question Anderson was at his car, trying to tip it over and that previous to that by a moment or so, Anderson had told him to back out, meaning to back out of the driveway, the court cannot reject that story; the court cannot reject the story of the officer who made this arrest. The officer may be confused on some details but he couldn't be confused as to when and how he arrested the man, as to whether he arrested him at the car and in the commission of this misdemeanor or whether he took him from a couple of other officers. Those things are too important for witnesses to confuse.
>
> "There was no question in the mind of the complaining witness as to the identity of the respondent and fixing him in the group who were committing this interference or molestation there by the car, and Officer Biggs said that the respondent was in the commission of that misdemeanor at the time he arrested him, that he did not take him from some other officers who may have previously arrested him. The stories of these two men are corroborated, if indeed they need corroboration, by the story of Walter Newland which was very compelling. It was a good sound logical story. The story told by Newland was too probable to withstand attack, and the conclusion of the court after a consideration of all the facts involved and the court has diligently considered all the factors of the case, that the respondent—that the People have established their case beyond all reasonable doubt and that the respondent Harold Anderson is guilty as charged."

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The Michigan statute here challenged was first enacted by the Legislature of Michigan by Act 163, Public Acts 1867, Sec. 7690 Compiled Laws 1871, Vol. 2.

This section of the statute as amended by Act 297, Public Acts 1947, Sec. 750.353, Compiled Laws of Michigan 1948, Sec. 28.584, Mich. Stat. Ann. (Henderson) 1947 Cum. Supp., reads as follows:

> "Any person or persons who shall, by threats, intimidations, or otherwise, and without authority of law, interfere with, or in any way molest, or attempt to interfere with, or in any way molest or disturb, without such authority, any person, in the quiet and peaceable pursuit of his lawful occupation, vocation or avocation, or on the way to and from such occupation, vocation or avocation, or who shall aid or abet in any such unlawful acts, shall be guilty of a misdemeanor."

The Supreme Court of Michigan has sustained this statute as being enforceable, and not unenforceable because of indefiniteness, and a proper exercice of the police power of the State, and that the statute is not violative of any constitutional provision, State or Federal. See

> *People* v. *Washburn*, 285 Mich. 119, 123 A. L. R. 311, Petition for appeal, referred by the Chief Justice to the Court, denied *Washburn* v. *Michigan*, 305 U. S. 577.

In the case of *Cole, et al.* v. *State,* (Supreme Court of Arkansas, January 1949) 216 S. W. (2d) 402, after mandate from the United States Supreme Court in the case of *Cole* v. *Arkansas*, 333 U. S. 196, the Court said on page 403:

> "In assailing the constitutionality of said Act 193, appellants say that the act is too indefinite to charge an offense, and also that the act violates provisions of

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both the State and the Federal Constitutions and Amendments. Section 1 of Act 193 has been upheld by this Court in several cases. See *Smith and Brown v. State*, 207 Ark. 104, 179 S. W. (2d) 185, 188, and *Gurein v. State*, 209 Ark. 1082, 193 S. W. (2d) 997. In *Smith and Brown v. State* (207 Ark. 104, 179 S. W. (2d) 186) we said:

"'• • • The Act here in question is an exact or verbatim copy of the Texas Statute, Art. 1621b of Texas Penal Code as amended by Chapter 100, Acts 47th Legislature, Regular Session, Vernon's P. C. Art. 1621b, except the latter statute carries an emergency clause, whereas, ours does not. On December 10, 1941, the Court of Criminal Appeals of Texas sustained the constitutionality of the Texas statute in *Ex parte Frye*, 143 Tex. Cr. R. 9, 156 S. W. (2d) 531. On the same date the same Texas Court sustained the same statute in *Ex parte Sanford*, 144 Tex. Cr. R. 430, 157 S. W. (2d) 899, on the authority of the *Frye* case. The Sanford case was appealed to the United States Supreme Court where it was dismissed on the ground that it did not involve a federal question. *Sanford v. Hill*, 316 U. S. 647.'"

And in view of other recent decisions of the Supreme Court of the United States in *American Federation of Labor* v. *American Sash & Door Co.*, 335 U. S. 538; *Lincoln Federal Labor Union, et al.*, v. *Northwestern Iron & Metal Co.*, No. 47, October Term 1948 (decided January 3, 1949) together with *Whitaker, et al.*, v. *North Carolina*, 335 U. S. 525, no substantial federal question is here involved.

WHEREFORE, appellee respectfully submits this statement showing that the questions upon which the decision of this cause depends are so unsubstantial as not to need further argument and appellee respectfully moves the Court to

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dismiss this appeal, or in the alternative to affirm the conviction of appellant entered below.

Respectfully submitted,

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Attorney General;
EDMUND E. SHEPHERD,
Solicitor General of Michigan;
DANIEL J. O'HARA,
Assistant Attorney General of Michigan;
JOSEPH E. KILLIAN,
Prosecuting Attorney of Berrien County,
For Appellee.

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